

RECEIVED  
CIRCUIT COURT FOR  
BALTIMORE CITY

ALEXANDRA M. CLANCY

Plaintiff,

v.

J. W. THOMPSON WEBB, as Personal Representative of the Estate of THOMAS L. CLANCY, JR. and Trustee of the Trusts Under the Last Will and Testament of THOMAS L. CLANCY, JR., et al.

Defendants.

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY  
\* Case No.: 24C17004404

2017 NOV 13 PM 1:29  
CIVIL DIVISION

JACK RYAN ENTERPRISES, LTD and JACK RYAN LIMITED PARTNERSHIP

Counter-Plaintiffs,

v.

ALEXANDRIA M. CLANCY

Counter-Defendant.

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY  
\* Case No.: 24C17004404

\* \* \* \* \*

**COUNTERCLAIM OF JACK RYAN ENTERPRISES, LTD. AND  
JACK RYAN LIMITED PARTNERSHIP**

Counter-Plaintiffs Jack Ryan Enterprises, Ltd. ("JREL") and Jack Ryan Limited Partnership ("JRLP"), collectively the "Jack Ryan Parties," by and through undersigned counsel, file this Counterclaim against Counter-Defendant Alexandra M. Clancy, and state as follows:

**INTRODUCTION AND BACKGROUND FACTS**

1. Counter-Plaintiff JREL is a Maryland Corporation.
2. Counter-Plaintiff JRLP is a Maryland Limited Partnership.

3. Counter-Defendant Alexandra M. Clancy (“Ms. Clancy”) is the plaintiff in this action, and a surviving spouse of the author Thomas L. Clancy, Jr. (“Mr. Clancy”) who died in October, 2013.

4. Ms. Clancy has brought this action against J.W. Thompson Webb, as Personal Representative of the Estate of Thomas L. Clancy, Jr. (the “Estate”) and as Trustee of the Trusts established under his Will, the Jack Ryan Parties, and Rubicon, Inc. (an asset of the Estate), in which she “seeks to determine the ownership” of Jack Ryan and other characters appearing in books written by Mr. Clancy.

5. This action arose because subsequent to Mr. Clancy’s death, the Estate, the Jack Ryan Entities and Rubicon have entered into contracts for the publication of “Tom Clancy” books written by others which make use of the characters as introduced and developed in books written by Mr. Clancy, the registered United States Copyrights to which are held either by one of the Jack Ryan Entities or Rubicon.

6. Ms. Clancy asserts that at the time of his death, Mr. Clancy owned the rights to Jack Ryan and other characters appearing in books written by Mr. Clancy prior to his death, and therefore the net proceeds of books written by others after Mr. Clancy’s death which utilize those characters belong exclusively to the Estate.

7. Contrary to Ms. Clancy’s contention, the Jack Ryan Entities have rights in Jack Ryan and other characters either pursuant to agreements entered into by Mr. Clancy and/or under the federal Copyright Act.

8. Ms. Clancy has structured her complaint so as to ignore the rights obtained by the Jack Ryan Entities in Jack Ryan and other characters under the federal Copyright Act.

9. JREL at the time of its creation, and until Mr. Clancy's death, was an entity owned 40% by Mr. Clancy; 40% by Wanda King ("Ms. King"), Mr. Clancy's first wife; and 5% by each of the four children of their marriage. At the time of his death, Mr. Clancy's 40% interest in JREL became an asset of his estate.

10. JRLP, at the time of its creation, and until Mr. Clancy's death, was an entity owned 50% by Mr. Clancy and 50% by Ms. King. At the time of his death, Mr. Clancy's 50% interest in JRLP became an asset of his estate.

11. Mr. Clancy wrote numerous books for JREL as works for hire, including Patriot Games, The Cardinal of the Kremlin, Clear and Present Danger and the Sum of All Fears all of which include development of the Jack Ryan character and other characters. JREL was from the outset and continues to own the registered United States copyrights for those books (the "JREL Copyrighted Books").

12. JREL also owns the registered United States copyright for The Hunt for Red October ("Hunt") in which Jack Ryan first appears.

13. Mr. Clancy wrote numerous books for JRLP as works for hire, including Without Remorse, Debt of Honor, Executive Orders and Rainbow 6, all of which include development of the Jack Ryan character and other characters. JRLP was from the outset and continues to hold the registered United States copyright for those books (the "JRLP Copyrighted Books").

14. JREL and JRLP are the authors of the JREL Copyrighted Books and the JRLP Copyrighted Books, respectively, under the United States Copyright Act.

15. JREL and JRLP are also each a co-author and co-owner of the registered United States Copyright in each of the Tom Clancy books written after Tom Clancy's death as works

for hire including Support and Defend, Full Force and Effect, Commander in Chief, True Faith and Allegiance, Under Fire, Duty and Honor, Point of Contact and Power and Empire.

**THE CONTROVERSIES REQUIRING DECLARATORY RELIEF**

16. There is an actual controversy between the plaintiff and the Jack Ryan entities as to rights in Jack Ryan and other characters based on agreements entered into prior to Mr. Clancy's death. The dispute can be resolved through the entry of declaratory relief.

17. There is an actual controversy between the plaintiff and the Jack Ryan Entities as to whether the Jack Ryan entities have rights in Jack Ryan and other characters under the federal Copyright Act by virtue of owning the registered United States copyrights in books where those characters were introduced and/or developed. The dispute can be resolved through the entry of declaratory relief.

18. Ms. Clancy, acting on behalf of herself and her minor daughter, has purported to provide a Notice of Termination of Transfer of Copyright extending to "all rights under copyright to the characters described in" Hunt with the termination having an effective date in October, 2019.

19. JREL contends the attempted termination of its rights as the holder of the registered United States copyright for Hunt is overbroad and ineffective, including to the extent it purports to extend to "all rights under copyright to the characters" in Hunt.

20. There is an actual controversy between Ms. Clancy and JREL as to whether the termination notice will result in the termination of the rights in the characters depicted in Hunt effective in October, 2019. The dispute can be resolved through the entry of declaratory relief.

21. There is an actual controversy between Ms. Clancy and the Jack Ryan Entities as to whether the Jack Ryan Entities have rights in Jack Ryan and other characters as created and

depicted in Hunt or the JREL Copyrighted Books and the JRLP Copyrighted Books which will be resolved by the declaratory judgments sought herein.

**FEDERAL COURT JURISDICTION**

22. The federal court has original subject matter jurisdiction over the claims asserted under the federal Copyright Act asserted in Counts II and III pursuant to 28 U.S.C. § 1338(a).

23. The federal court has supplemental jurisdiction over Count I which asserts matters which are so related to the claims over which the court has original jurisdiction that they form part of the same case or controversy. 28 U.S.C. § 1337.

**COUNT I**

**(Declaratory Relief As To Ownership By the Jack Ryan Entities of Rights In Jack Ryan And Other Characters By Reason of the Agreements Entered Into By Mr. Clancy)**

24. The Jack Ryan Parties incorporate the allegations in paragraphs 1 – 16 and 21 - 23 as though fully set forth herein.

25. In making her assertion in the Complaint that Mr. Clancy owned the rights to Jack Ryan and other characters in books written by him, Ms. Clancy relies on an interpretation of certain agreements, including documents relating to transactions with the United States Naval Institute (“USNI”) involving Hunt and characters created therein, and the Agreement between Mr. Clancy and Ms. King resolving issues arising out of their divorce.

26. In fact, the agreements relied on by Ms. Clancy, properly interpreted, result in the opposite conclusion, i.e., that the Jack Ryan Entities have rights in Jack Ryan and other characters, as recognized by Mr. Clancy himself, as well as by Mr. Clancy’s intellectual property lawyers.

27. By Agreement dated November 21, 1983, Mr. Clancy entered into an agreement (the "USNI Agreement") with the USNI with respect to an unpublished book titled provisionally as The Hunt for Red October.

28. In the USNI Agreement, Mr. Clancy transferred to the USNI the exclusive worldwide copyright in Hunt.

29. The USNI obtained the registered United States copyright for Hunt.

30. In the USNI Agreement, Mr. Clancy agreed with the USNI that he would not without written permission from USNI "publish or permit to be published any material based on, or derived from, or directly competitive with this Work [i.e., Hunt], so long as this [the USNI] Agreement shall remain in force."

31. The USNI obtained rights in the character Jack Ryan as well as other characters that appeared in Hunt as a result of holding the registered United States copyright in Hunt and/or the USNI Agreement.

32. In 1988, in resolution of a dispute between Mr. Clancy and the USNI (the "USNI Settlement"), Mr. Clancy bought back from USNI for an agreed upon payment of \$125,000 the copyright in Hunt, together with "all rights in and to the" book (exclusive of book publishing rights) and specifically including all rights in and to the characters.

33. Pursuant to the USNI Settlement, Mr. Clancy directed the USNI to assign on his behalf to JREL the rights Mr. Clancy received back from the USNI. JREL became obligated to and in fact made the payments to the USNI for such rights.

34. On November 30, 1988, the USNI, as Assignor, entered into a formal Transfer of Ownership Of Copyright and Assignment transmitting to JREL "[t]he exclusive worldwide

rights of every kind and nature (now or hereafter known)" and the registered United States copyright in Hunt, with the exception of certain defined book publishing rights.

35. JREL obtained from Mr. Clancy via USNI rights in the characters as depicted in Hunt, including, without limitation, Jack Ryan.

36. From and after the November 30, 1988 assignment, Mr. Clancy treated JREL as the owner of the exclusive worldwide copyright and all rights in Hunt, including rights in the character Jack Ryan – except for certain defined "book publishing rights".

37. From and after the November 30, 1988 assignment, JREL had and continues to have rights in the character Jack Ryan and any other characters as they were introduced and developed in Hunt.

38. On December 28, 1998, in connection with their separation and divorce, Mr. Clancy and Ms. King entered into an Agreement resolving all issues between them (the "Clancy Settlement").

39. The Clancy Settlement addressed the rights of Mr. Clancy and Ms. King in the properties owned by JREL and JRLP.

40. The Clancy Settlement provided that any contracts other than those making incidental use (such as flashbacks) between Mr. Clancy or an affiliated entity involving the story lines (including the characters) owned by JREL or JRLP would be assigned to JREL or JRLP, thereby recognizing the rights of the Jack Ryan Entities in both the story lines and the characters of the books in which they held the registered United States copyright.

41. The Clancy Settlement (in the same paragraph) provided Mr. Clancy with the limited right to use the characters in which JREL or JRLP had rights in any sequel that he may create while alive, providing he "shall be free to use the characters in the works owned by JRLP

or JREL in any sequel to any of those works or in any other future work that [Clancy] may create..."

42. The Clancy Settlement provided that the Jack Ryan Entities had rights in the characters as depicted and developed in the books to which they owned the registered United States copyright, and provided Mr. Clancy with the right to use those characters in sequels while alive.

43. A declaration should be entered that the Jack Ryan Entities have rights in the characters as introduced and/or further developed in the books to which they hold the registered United States copyright.

44. A declaration should be entered that as a result of rights in the characters, the Jack Ryan Entities properly share in the net proceeds from Tom Clancy making use of those characters in a manner which includes how they were depicted in books in which the Jack Ryan Entities have an interest by virtue of having the registered United States copyright.

## COUNT II

### (Declaration Relief As To The Rights of The Jack Ryan Entities In Jack Ryan and Other Characters Under Federal Copyright Law)

45. The Jack Ryan Entities incorporate the allegations in paragraphs 1 – 15, 17 and 21 – 23 as though fully set forth herein.

46. The Copyright Act provides that in the case of a work made for hire, the "person for whom the work was prepared is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright." Copyright Act, 17 U.S.C. § 201(b).

47. As a matter of federal copyright law, JREL obtained rights in the characters introduced in the Hunt for Red October or the JREL Copyrighted Books.

48. As a matter of federal copyright law, JRLP obtained rights in the characters introduced in the JRLP Copyrighted Books.

49. As a matter of federal copyright law, the Jack Ryan Entities obtained rights in Jack Ryan and other characters to the extent they were further developed sufficiently to satisfy the minimum copyright requirement of originality in the JREL Copyrighted Books or the JRLP Copyrighted Books of which JREL and JRLP, respectively, are the author and holder of the registered United States Copyright,

50. The Jack Ryan Entities also obtained rights in Jack Ryan and other characters to the extent they were further developed sufficiently to satisfy the minimum copyright requirement of originality in books in which the Jack Ryan Entities are co-owners of the registered United States copyright written subsequent to Mr. Clancy's death in which the Jack Ryan Entities have a copyright interest.

51. The rights in the characters owned by the Jack Ryan Entities as a result of their being the author and holder of the registered United States copyrights for the JREL Works for Hire and the JRLP Works for Hire are independent of those rights Ms. Clancy asserts (but which the Jack Ryan Entities deny) the Estate owns under the terms of existing contracts.

52. A declaration should be entered that the Jack Ryan Entities have rights in the characters as they were introduced and/or developed in books for which each holds the registered United States copyright.

53. A declaration should be entered that as a result of rights in the characters, the Jack Ryan Entities properly share in the net proceeds from Tom Clancy books making use of those characters in a manner which includes how they were depicted in books for which the Jack Ryan Entities hold the registered United States copyright.

**COUNT III**

**(Declaratory Relief As To The Ineffectiveness of The Attempted Termination of the Copyright In Hunt For Red October)**

54. The Jack Ryan Entities incorporated the allegations in paragraphs 1 – 16, and 18 – 21 as though fully set forth herein.

55. Unlike the other books for which JREL and JRLP hold the registered United States copyright, Hunt was not created as a work for hire.

56. The Copyright Act permits the termination of a copyright transfer for a work (other than a work made for hire) by an author or, if deceased, by the heirs of an author entitled to more than one-half of an author's termination rights. 17 U.S.C. § 203(a).

57. By statute, as the widow of Mr. Clancy, Ms. Clancy has a 50% interest in Mr. Clancy's termination rights.

58. By statute, Ms. Clancy and Mr. Clancy's minor daughter has a 10% interest in Mr. Clancy's termination rights in Hunt by virtue of being one of five surviving children of Mr. Clancy.

59. The termination right may only be exercised in a defined statutory period.

60. By a purported Notice of Termination of Transfer of Copyright for the Work Entitled "THE HUNT FOR RED OCTOBER" dated March 4, 2016 (the "Termination Notice"), Ms. Clancy, on behalf of herself and as natural guardian for her minor child, sought to terminate (effective as of October 9, 2019) the transfer of the right to obtain a federal copyright for Hunt to the USNI.

61. Ms. Clancy's Termination Notice asserts that it extends to "all rights under copyright to the characters described in" Hunt.

62. By virtue of the USNI Settlement in 1988, the USNI no longer had any interest in the registered United States copyright for Hunt or characters depicted therein. Rather, Mr. Clancy reacquired those rights and directed the USNI to transfer those rights to JREL on his behalf.

63. A declaration should be entered that the Termination Notice is overbroad and ineffective at least to the extent it seeks to affect the "copyright to the characters described in "Hunt."

WHEREFORE, the Jack Ryan Entities request that the Court enter Declaratory Relief as requested at the end of each count herein, and grant such other and further relief as the cause may require.



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 13<sup>th</sup> day of November, 2017, a copy of the foregoing Counterclaim of Defendants Jack Ryan Enterprises, Ltd. and Jack Ryan Limited Partnership was e-mailed and mailed, first-class, postage prepaid, to the following:

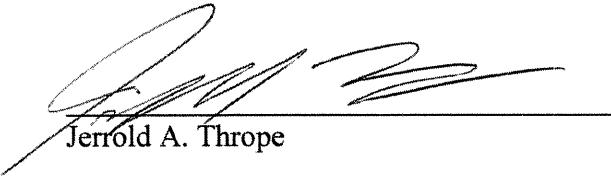
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